

ROBERT T. SULLWOLD (SBN 88139)  
JAMES A. HUGHES (SBN 88380)  
SULLWOLD & HUGHES  
235 Montgomery Street, Suite 730  
San Francisco, CA 94104  
(415) 263-1850  
(415) 989-9798 FAX

Attorneys for Plaintiff  
salesforce.com, inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SALESFORCE.COM, INC., a Delaware  
Corporation,

Plaintiff,

v.

THE COMPUTER MERCHANT, LTD, a  
Massachusetts Corporation,

Defendant.

Case No.: C 07 3556 WHA

COMPLAINT FOR BREACH OF CONTRACT;  
ACCOUNT STATED; AND BOOK ACCOUNT

As and for its Complaint in this matter, Plaintiff salesforce.com, inc. ("SFDC") alleges:

**NATURE OF THE ACTION**

1. SFDC brings this diversity action to collect amounts that Defendant The Computer Merchant, Ltd. ("Defendant") owes to SFDC pursuant to a written agreement between the parties for SFDC to provide subscription software services to Defendant.

**PARTIES**

2. SFDC is and at all times herein mentioned was a corporation organized under the laws of the State of Delaware, with its principal place of business in San Francisco, California. SFDC is qualified to do business and is doing business in the State of California.

3. SFDC is informed and believes, and on that ground alleges, that Defendant is and at

all times herein mentioned was a corporation organized under the laws of the State of Massachusetts, with its principal place of business in Norwell, Massachusetts. SFDC is further informed and believes, and on that ground alleges, that Defendant is qualified to do business and is doing business in the State of California.

#### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this dispute under 28 U.S. Code §1332, in that the matter in controversy exceeds the sum of \$75,000 and is between citizens of different states.

5. Venue is appropriate in this District pursuant to a forum selection provision contained in the agreement between the parties. See paragraph 11, *infra*.

#### **INTRADISTRICT ASSIGNMENT**

6. The parties have agreed that San Francisco is an appropriate venue for this matter. See paragraph 11, *infra*. Accordingly, this action is properly assigned to the San Francisco Division of the Court.

#### **FACTUAL ALLEGATIONS**

7. SFDC provides on-demand customer relationship management (CRM) services to businesses and industries worldwide. It also provides professional services, including training, when ordered by its customer.

8. SFDC is informed and believes, and on that ground alleges, that Defendant provides Information Technology (“IT”) solution and enterprise staffing services to Fortune 1000 and mid- to small-sized corporations, as well as Federal, state, and local governments. SFDC is further informed and believes, and on that ground alleges, that Defendant was ranked as the fastest growing privately held IT staffing company in the United States over the period from 2003 to 2005 and is the 5th largest privately held IT Staffing company in the US by revenue.

9. On or about May 31 and June 1, 2006, Defendant and SFDC executed an Order Form that, pursuant to its terms, is governed by the terms of the contemporaneously-executed SFDC Master Subscription Agreement. True and correct copies of the Order Form and the SFDC Master Subscription Agreement (hereinafter collectively referred to as the “MSA”) are attached hereto as Exhibit 1. Pursuant to the MSA, Defendant ordered from SFDC, and agreed to pay for, a three year subscription for SFDC

1 services, including SFDC's Unlimited Edition and Account Intelligence-Standard Regional.

2 10. Defendant and SFDC agreed to a total fee for Defendant's three-year subscription of  
 3 \$703,625.00, plus tax, with each year's fee due and payable annually in advance. Defendant made the  
 4 first annual payment as required by the MSA, but has failed and refused to pay the second annual  
 5 subscription fee, which totaled \$244,518.75 (including tax) and was due on May 31, 2007. In addition,  
 6 Defendant has repudiated its obligation to pay the third annual subscription fee, which also totals  
 7 \$244,518.75 (including tax).

8 11. The MSA includes the following forum selection provision:

9 Venue. The state and federal courts located in San Francisco County,  
 10 California shall have exclusive jurisdiction adjudicating any dispute  
 11 arising out of or relating to this Agreement. Each party hereby consents to  
 the exclusive jurisdiction of such courts.

12 Exhibit 1, MSA ¶11.8. The parties thereby agreed to jurisdiction and venue in this Court.

13 **FIRST COUNT**  
 14 **(Breach of Contract)**

15 12. SFDC incorporates by this reference paragraphs 1 through 11, inclusive, and realleges  
 16 such paragraphs as though fully set forth herein.

17 13. SFDC performed all conditions, obligations, and covenants required of it under the  
 18 MSA.

19 14. Despite SFDC's demands therefor, Defendant has failed and refused and continues to  
 20 fail and refuse to pay any of the additional subscription fees due under the MSA. Such refusal to pay  
 21 constitutes an actual and anticipatory breach of the MSA.

22 15. As a proximate result of Defendant's breach, SFDC has incurred damages of  
 23 489,037.50, which represents the total unpaid amount due under the MSA, plus interest on such amount  
 24 at the legal rate.

25 WHEREFORE, SFDC prays judgment as set forth below.

26 **SECOND COUNT**  
 27 **(Account Stated)**

28 16. SFDC incorporates by this reference paragraphs 1 through 11, inclusive, and realleges

such paragraphs as though fully set forth herein.

17. Within the last four years, Defendant became indebted to SFDC because an account was stated in writing between Defendant and SFDC in which it was agreed that Defendant was indebted to SFDC in the amount \$489,037.50.

18. Neither the whole nor any part of the above sum has been paid, although a demand therefor has been made, and there is now due, owing and unpaid the sum of \$489,037.50, plus interest thereon.

WHEREFORE, SFDC prays judgment as set forth below.

### THIRD COUNT

**(Book Account)**

19. SFDC incorporates by this reference paragraphs 1 through 11, inclusive, and realleges such paragraphs as though fully set forth herein.

20. Within the last four years, Defendant became indebted to SFDC on an open book account in the amount \$489,037.50.

21. Neither the whole nor any part of the above sum has been paid, although a demand therefor has been made, and there is now due, owing and unpaid the sum of \$489,037.50, plus interest thereon.

WHEREFORE, SFDC prays judgment as follows:

1. For damages in the amount of \$489,037.50;
2. For interest at the legal rate on all unpaid amounts from the time payment was due until the date of the judgment;
3. For costs of suit; and
4. For such other and further relief as the Court deems just and proper.

DATED: July 10, 2007

ROBERT T. SULLWOLD  
JAMES A. HUGHES  
SULLWOLD & HUGHES

By: /S/  
JAMES A. HUGHES  
Attorneys for  
PLAINTIFF SALESFORCE.COM, INC.

